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11 **UNITED STATES BANKRUPTCY COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

13 In re:

14 PG&E Corporation, Pacific Gas & Electric
15 Company,
16 Debtors.

Bankruptcy Case
No. 19-30088 (DM)
Chapter 11
(Lead Case)
(Jointly Administered)

17 ☐ Affects PG&E Corporation
18 ☒ Affects Pacific Gas and Electric Company
19 ☐ Affects both Debtors
20 * All papers shall be filed in the Lead Case No.
21 19-30088 DM.

**OPPOSITION OF SHILOH IV LESSEE,
LLC TO DEBTORS' FIRST OMNIBUS
REPORT AND OBJECTION TO CLAIMS
ASSERTED PURSUANT TO
11 U.S.C. § 503(b)(9)**

Hearing Date: 8/14/2019
Time: 9:30 a.m. PT
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

Objection Deadline: July 31, 2019
4:00 p.m. PT

1 Shiloh IV Lessee, LLC (“Shiloh IV”) submits this opposition (this “Opposition”) to the
2 *Debtor’s First Omnibus Report and Objection to Claims Asserted Pursuant to 11 U.S.C. § 503(b)(9)*
3 [Docket No. 2896] (the “Omnibus Objection”), filed by PG&E Corporation (“PG&E”) and Pacific
4 Gas and Electric Company (the “Utility” and together with PG&E, the “Debtors”) in the above-
5 captioned chapter 11 cases (the “Chapter 11 Cases”), and respectfully represents as follows.

6 **Background**

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8 Shiloh IV and the Utility are parties to a Power Purchase Agreement, dated July 28, 2011
9 (the “PPA”), whereby Shiloh IV, as seller, supplies electricity to the Utility, as buyer, at contractual
10 rates under the terms of the PPA.¹

11 On April 17, 2019, Shiloh IV submitted a proof of claim pursuant to 11 U.S.C. § 503(b)(9)
12 and the Court’s *Order Establishing Procedures for the Assertion, Resolution, and Satisfaction of*
13 *Claims Asserted pursuant to 11 U.S.C. § 503(b)(9)* [ECF No. 725], asserting a claim against the
14 Utility for amounts owed for power generation it received during the 20-day period prior to January
15 29, 2019 (the “Shiloh IV 503(b)(9) Claim”).² The Shiloh IV 503(b)(9) Claim asserted an amount
16 of \$662,317.79, premised on the setoffs taken by Shiloh IV; otherwise, Shiloh IV reserved the right
17 to amend its 503(b)(9) claim to assert a claim as high as \$751,172.43.

18
19 On July 8, 2019, the Debtors filed their Omnibus Objection, seeking to partially reclassify
20 the Shiloh IV 503(b)(9) Claim as a general unsecured claim on the grounds that the amount asserted
21 allegedly “includes amounts that do not represent goods delivered in the 20 days prior to the Petition
22 Date.” See Omnibus Objection, Exhibit A. Specifically, the Debtors propose that of the
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¹ The Utility originally entered into the PPA with Shiloh IV Wind Project, LLC (“Shiloh Wind”). Shiloh Wind assigned,
27 transferred and set over all of its right, title and interest in the PPA to Shiloh IV, and Shiloh IV assumed all privileges,
28 liabilities and obligations of Shiloh Wind thereunder pursuant to that certain Assignment and Consent Agreement, dated
as of December 27, 2012, by and among the Utility, Shiloh Wind and Shiloh IV.

² The Shiloh IV 503(b)(9) Claim is claim number 2447.

1 \$662,317.79, \$471,552.14 be allowed under 11 U.S.C. § 503(b)(9) and that the remaining
2 \$190,765.65 be reclassified as an unsecured claim.

3
4 **Opposition**

5 The entirety of the Shiloh IV 503(b)(9) Claim was attributed to goods supplied to and
6 received by the Utility. No portion of the claim related to services or a combination of goods and
7 services, as evident from the invoice that Shiloh IV submitted together with its proof of claim.
8 Accordingly, the Shiloh IV 503(b)(9) Claim should be allowed as filed.

9 Shortly before filing bankruptcy, the Utility paid Shiloh IV for certain outstanding invoices
10 plus certain prepayments above and beyond amounts then due. As of the petition date, Shiloh IV
11 had delivered power generation to the Utility for which it had not been paid, and at the same time
12 was in possession of such prepayments. Fortunately, the Debtors obtained a first-day order that
13 specifically authorized Trading Counterparties, like Shiloh IV, to setoff mutual amounts owed
14 without need for further Court order.³ Under the Trading Counterparties Order, [t]he Trading
15 Counterparties are authorized to exercise any valid right to setoff, settle or recoup *any obligations*
16 owing by the utility to the Trading Counterparties, and to apply cash or other collateral to
17 outstanding obligations, notwithstanding any limits otherwise imposed by section 553 of the
18 Bankruptcy Code.” (emphasis added). In accordance with the Trading Counterparties Order, Shiloh
19 IV applied the prepayments to outstanding invoices and obligations of the Utility on a first-in-time
20 basis.
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23 If the setoff is so allowed, Shiloh IV will have a 503(b)(9) claim in the amount of
24 \$662,317.79; if the setoff is disallowed, however, Shiloh IV could have a 503(b)(9) claim as high
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26 ³ See Final Order Pursuant to 11 U.S.C. §§ 105, 362, 363, and 364 and Fed. R. Bankr. P. 6003 and 6004 Authorizing
27 Debtors to (A) Honor Prepetition Obligations to Natural Gas and Electricity Exchange Operators, (b) Grant
28 Administrative Expense Claims and Authorize Posting of Collateral to Exchange Operators, Trading Counterparties,
and Future Commission Merchants, (C) Modify the Automatic Stay, and (D) Grant Related Relief, [ECF No. 696] (the
“Trading Counterparties Order”).

1 as \$751,172.43, plus additional general unsecured claims. Shiloh IV's assertion of a 503(b)(9) claim
2 in the amount of \$662,317.79 is premised upon its setoff and first-in-time methodology, which the
3 Trading Counterparties Order allows.

4 Accordingly, Shiloh IV respectfully requests that the Court (1) deny the Omnibus Objection
5 as it pertains to the Shiloh IV 503(b)(9) Claim, and (2) rule that the Shiloh IV properly set off
6 prepayments under the Trading Counterparties Order.
7

8 Dated: July 31, 2019

SHEARMAN & STERLING LLP

9
10 /s/ C. Luckey McDowell

C. Luckey McDowell (admitted *pro hac vice*)

Daniel Laguardia

Ian E. Roberts (admitted *pro hac vice*)

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/s/ C. Luckey McDowell
C. Luckey McDowell